

Telework Management: Course #2 - Telework as a Reasonable Accommodation

**Instructors**



Alison S. Levy
Disability Employment Program Director
Office of Human Resources Management
U.S. Department of Agriculture



Mika Cross
Work/Life and Wellness Program Director
Office of Human Resources Management
U.S. Department of Agriculture



3



Allan: Hello and welcome to today's webinar course, "Telework Management", course number two, which is about telework as a reasonable accommodation. And thank you, everyone, for joining us today. I know the weather there, in DC, where most of you are, has been a little bit rough, so we appreciate you taking the time especially to join us today. And there are several hundred people here already. I think we'll probably pass 400 or 500 people today, so we have muted everyone, as usual, and we will be taking questions. So please do type your questions in your question box as they occur to you and we will try to get to all of them today and, if we miss any, we'll try to provide answers to them in the course page.

I do want to say right up front that today's webinar is a little bit different, a lot better for this reason. There'll be half closed captioning, courtesy of the USDA. And the close captioning is available to anyone who wants it by using this link, so you can basically log out of the webinar now and use this URL, come right back in, and you will see the closed captioning. So I'll leave that up for a moment and I'll paste it also in the notes so that you can see that. OK, I think that's been there for a while. I will, as I said, post that in the notes at the bottom in a moment but, for now, if you can just take note of that, you'll be able to use that link.

Very fortunate to have with us today two extremely well qualified presenters. First, Alison Levy, who is the disability employment program director at the Office of Human Resources Management at the USDA. And Alison has a real strong background on what we're going to be talking about today in terms of reasonable accommodation. So we're very fortunate to have Alison, thank you for joining us, Alison. Mika Cross, who many of you know, has been on presentations with us in telework and also in wellness twice before, and Mika is the work/life and program director at the Office of Human Resources Management for USDA, and as well has a great deal of experience in options such as



Telework Management: Course #2 - Telework as a Reasonable Accommodation

telework and other flexible work and wellness programs. So welcome, Mika, we're glad you could join us again today.

Alright. Just before we get started with the content today and the main part of the presentation, I do want to remind everybody that you can get more information about this course, you can download the slides, the speaker notes, the transcript. There will be closed captioning with the course recording as well. You can get that all from tmgovu.org and the course page associated with this course today in the certificate series of telework management. But we've also added a great deal of other information, including white papers and tools and ROI calculators, videos and so on. So please join the other students who have enrolled in this course to access that information.

As always, if you did complete the entire series of six courses, you will be eligible for credits from TMGov and the HRCI, so we encourage you to do that. You'll receive more information about this in an email that will come to you within a day or two.

OK, so I'm going to turn it over to Mika at this point. Mika, why don't you go ahead?

Mika: Thanks so much, Allan. And thanks, all of you on the line, for joining us today for "Let's Telework", our second part in a six-part series. So why telework is a reasonable accommodation? Well, when organizations leverage telework as a strategic management tool for recruitment and retention, it can be given to the fact of cultural change overcoming socio-economic barriers to cultivating and diverse and inclusive workforce that really embraces flexibility to attract and retain our training military heroes for federal service, caregivers in the workforce and, of course individuals with disabilities is really turn up for our federal workforce looking to attract the next generation of fed workers. As you know, studies show that diverse workforce results in more innovation, increased productivity and can result in heightening mission effectiveness.

But did you know that 53% of the current SESmembers are eligible for retirement in the next three years and only 25% of the current workforce includes individuals with targeted disabilities. So teleworking really repositions, if implemented strategically, to align with key capital initiatives, such as succession in workforce planning. Let's move on.

From a policy perspective, the Telework Enhancement Act of 2010 provided a consistent framework for the federal government to follow, which regards two policy standards for position eligibility, employee suitability, training, telework agreements and more. And something to keep in mind, though, that, out of a flexible workplace program, telework really must be designed from a business perspective to be flexible and adaptive to the work environment. So, in our honesty, a one side [05:32] approach really isn't going to be feasible for most organizations, not even for sub-organizations within different agencies. Our managers really must be able to look at the total picture of their workforce and make individualized decisions, based on position requirements, job duties and functions, office coverage and more. And actually, from a cultural perspective at USDA, we have really tried to incorporate a culture of shared responsibility between both the management and employees, to encourage enhanced communication and teamwork to really make the program a



Telework Management: Course #2 - Telework as a Reasonable Accommodation

success. So, with that said, now we'd like to hear from you. Allan, would you be so kind to bring up our first poll question for the audience to participate in? Thanks so much.

Allan: Yes, I will. I'd just like everyone to—

Mika: I really want to hear some of your—

Allan: Quick look at this question because it is a little bit different. Mika, when we show another poll, it's been truncated a little bit. So we'll leave that up for just a moment.

Mike: Yeah. And I know Alison is quite interested in seeing this as well, about how you would rate your own personal knowledge of using telework as a reasonable accommodation. So, if you are indicate whether or not you have no experience, some experience, or you consider yourself a seasoned expert, we'd really like to hear from you now. So how is that looking so far, Allan?

Allan: We have 73% voted, so why don't we leave it up for one second and...

Mika: OK, great.

Allan: OK. There you go.

Mika: So, as you can see, we have a lot to learn, which is why we really focused on this topic, specifically about medical telework and, of course, telework as a reasonable accommodation. With all that said, we're going to turn it to Alison Levy, my colleague, who will help us understand the process for using telework as a solution to offer reasonable accommodation in the workplace to those who may need it and, of course, qualify. Alison

Alison: Hey, Mika. It's a pleasure to be here this morning, for some of you on the west coast and, for the east coast, afternoon. I wanted to start off my portion with a basic question. It's actually a frequently asked question that we hear from you often. And the question is, does the ADA require employers to have telework programs? And the bottom line is the ADA doesn't require telework. However, if there is no telework policy in place and you have an employee with a disability who needs telework as a reasonable accommodation, then the employer will need to consider it and go to the Reasonable Accommodation Process to make that determination. The ADA requires, or the Americans with Disabilities Act, requires equal opportunity and equal access, so our goal is always to try and make sure that our employees with disabilities have equal access and benefits and privileges that our nondisabled employees have. Let's move on.

So let's talk about just standard telework. For a person who just happens to have a disability and a telework policy and procedures are in place within an organization or agency, it's perfectly OK for an employee with a disability to get telework as their nondisabled peers. And, as I stated, the ADA requires that agencies and employers provide equal benefits and privileges of employment so, in this case, you wouldn't necessarily have to go to the Reasonable Accommodation Process just because the person has a disability. If they don't need any assistive technology or any additional supports at



Telework Management: Course #2 - Telework as a Reasonable Accommodation

home – perhaps they are already in place with their home computer – then you just refer to the Agency Telework Policy, and that would be a pretty straightforward request.

Mika: So, Alison, if management can come to a mutual agreement with their employee on the telework arrangement that makes without having to go to the Reasonable Accommodation Process, that can be done. Is that what you're talking about there?

Alison: Absolutely. But let's just keep it simple and stick with common sense. We certainly don't want to present more challenges to our employees with disabilities or more steps or processes that we do for folks without disabilities. So you hit the nail on the head, Mika.

Mika: Thanks for clarifying.

Alison: Thanks. Let's go ahead to the medical type of telework. Now this is not a legal term. Mika and I collaborated, as we do frequently with our two program areas, just to kind of present information in simple terms and make sure people understand there are different types of telework. In 2009, the Americans with Disabilities Act was amended and amendments are referred to as ADA Amendments Act of 2009. Under that act or amendment, the definition of disability was greatly expanded and broadened. And I'll talk into more detail about that in a few slides, but we wanted to make sure you understood that, for medical conditions that are very temporary in nature, it's really up to the individual telework policy and individual supervisors whether or not they will allow that. So, on the next slide, I presented a few examples of what might be considered a medical type of telework.

This is not disability-related. Here, we have three different pictures. The first picture is of someone who's got their ankle or foot wrapped up. Someone has a sprained ankle that's a very nature, really just need to stay off their foot for maybe a few days and keep it iced and elevated. They might want to contact their supervisor and ask to telework. Another example is if someone has a cold or a flu. We are sensitive to not spreading that throughout the workplace, and the person is well enough to do work from home, but you really don't want them sharing that with everyone else. So that might be another example in which a person might want to request telework for medical reasons for one or two days. And the third example I presented is someone has just a doctor's appointment. Frequently, we develop relationships with doctors that are closer to home than they are closer to work. And, to maintain productivity and keep more hours on the clock, it would be more cost effective and beneficial for both the manager and the employee to just work from home the day they might have a doctor's appointment and perhaps use that as their lunch hour. So I hope that provides strong examples to you as to what might be considered just kind of a short term medical condition or a medical need that may require a person to request telework.

OK, let's go forward with the next example or the next type of telework. And this is where we're going to dive a little more deeply. Telework as a form of reasonable accommodation. You really need to follow the procedures that are outlined within your employer, your company, or your federal agency. And I'll talk on the next slide a little more about the overall process, but the first step is really to determine that the employee has a disability as defined by the ADA Amendments Act. And



Telework Management: Course #2 - Telework as a Reasonable Accommodation

that limitation needs to impact their ability to complete an essential job function in order for it to be considered an accommodation and that the telework would be meaningful or effectively for the person to fulfill their essential job functions. So the usual process is to contact your Agency Reasonable Accommodation Designee for support and kick-starting that process and for you to follow the Agency Reasonable Accommodation Policy and Procedures.

Now, back over to Mika.

Mika: OK, great. I think now would be a wonderful time to pull out our next poll. Allan if you could do that for us, please.

Allan: Yes, I'll do that, Mika. Again, here we have a question that I'd like the audience to read before we switch over to the actual poll, just so you know the full question. Our poll software won't accommodate as long a question as this, so I'll just leave that up there for a moment. We also have a series of questions, so I will share those with Alison and Mika during the poll.

Mika: Yeah, that's great. I really think this would be a great time for some questions before we move on.

Allan: OK, well Yolanda asks, "Is there a timeframe that should be placed on the use of telework as a reasonable accommodation? For example, if the employee requests a four month period of telework."

Alison: If it's a reasonable accommodation, that would be determined by the interactive process, whereas you have to balance the needs in the workplace and whether or not the actual job functions could be performed at home, and balance that with the person's limitations. There's no legal guidance on how long or how many hours a person could telework. It really is on a case-by-case basis, through discussion with the employee and manager.

Mika: Something I'd like to recommend when thinking about that is, when you're looking at what otherwise could have been taken, as FMLA or long-term sick leave, thinking through what normally is recommended for either a recuperation time at a temporary disability or a short-term disability, rather, or just a medical condition. If those functions can be performed off-site, it's wiser to accommodate through telework even if not through the Interactive Reasonable Accommodation Process. And so, at USDA, what we choose to do is, in conjunction with officer, general council and, of course, at the Disability Employment Program Office, we collaborate together to determine whether or not we really needed any kind of indication on the form, so check the box that it was a request based on medical reasons and, from the department level, we chose to remove that. Not only for privacy issues, and that's what we're asking here, on the audience poll, but also because we really wanted managers and employees to focus on the solution of how they would accommodate getting the work done, not necessarily on the reason, unless it went through the formal Reasonable Accommodation Process.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Alison: And, Mika, you hit on something very important. I think the bottom line with any accommodation and really with telework is to maintain productivity. Don't get hung up on the definitions always, don't get hung up in the nature of the disability, but really look at how that employee can continue to be most productive and effective.

Mika: Absolutely. Thanks.

Allan: But—

Mika: Allan, any other questions that you'd like at the time?

Allan: Sorry. Michael asks a question here about pregnancy or even extended time with the baby after it's born. I suppose he means beyond regular maternity or paternity. Could this be something that you would consider medical or a reasonable accommodation?

Alison: That's actually a great question because I did include a frequently asked question and actually some examples about pregnancy issues. Remember that, in terms of reasonable accommodations, reasonable accommodations are for the actual person with a disability. And pregnancy in itself is not a disability. However, there are some complications that are rather extensive, that are not necessarily very, very temporary in nature. It might rise to the level of disability and that person can be accommodated but, in terms of extending maternity leave to continue to care for a child, that would not be considered a disabling condition for the employee and would not fall under reasonable accommodation. But certainly you can discuss options with the manager or supervisor to give you more flexibility. Mika, do you want to—

Mika: Yeah, Alison, that's a really good point. I wanted to give a little testament to that, both from a personal perspective and when I worked in employee relations in a different federal agency. We had a manager that was really concerned about his top performing employee. I mean this was a superstar. And she was going to go on maternity leave and actually wanted to come back to the workforce earlier than what would have been the three months stipulation, because she did have a few complications. But you know what he did instead of going to the formal process? Is I spoke with him about creative leave to authorize maybe using FMLA on a part-time basis and accommodation on telework and them accommodation of coming into the office, and that manager got his employee, his star employee, to come back two months earlier than she normally would have on a part-time basis.

But she was productive, she was still working, and he was so happy with the arrangement, and so was she. And so just thinking through some of those flexible ways that you can think out of the box and creatively about using telework, flexible work schedules, maybe even a part-time solution in order to continue the mission and get your people engaged and still working, while still giving them what they need to do their job well.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Alison: I just want to add a comment. Mika, I think that's a great example because you're helping illustrate how managers do have a toolbox of resources available to them to really maintain productivity. And it doesn't just have to where you choose either reasonable accommodation or telework, but you're mixing a variety of different policies that end up being a great accommodation for both the manager and the employee.

Mika: Absolutely. I think it gets a little scary when you can't do that equitably for managers, they worry about complaints, others that might not be able to do it that way, but again, remember that workplace flexibility is designed to be flexible. And so having that strong conversation and communication around what the business reasons are for making those hard decisions is really going to be important for managers. So, Allan, any other questions before we move on?

Allan: There are, but I'll save them for a few minutes, if you don't mind, because we have the poll results there and I wondered if you have comments on them.

Mika: Alison, what do you think looking over the results from the audience here?

Alison: Well, it's great. 48% of the folks recognize that this is medical information and it's private, and Mika will attest the fact that we had a lot of discussions around this question within the telework policy and agreement form and decided that truly it's private information and certainly anything disability-related is confidential and must be kept in a separate file from a person's standard personnel file. It must remain under a lock and key. That's highly confidential information. So, for those of you who answered "yes", you should be answering "no" on this question.

Mika: Well, I was going to speak to those who said "yes" because it's interesting. Many of the telework coordinators at the agency level throughout our department were really concerned that not having a category called medical telework would preclude managers from authorizing telework just as a form of informal accommodation for those reasons that you mentioned before, like someone might have sprained an ankle or broken a bone or is recovering from surgery, whatever it might be, that those things that might not qualify necessarily under reasonable accommodation, but certainly is a medical justified reason for why someone would need to telework. Really, from a cultural perspective, they were concerned about that being a barrier.

So we're working really hard, in tandem with our Disability Employment Program, as you see, as well as through manager's training, to ensure that people understand they have the flexibility to authorize it. The reason doesn't really matter. Applying the policy, of course, looking at feasibility and eligibility, and making good business decisions based on the situation at hand. So I just want to caution those on the line to seek through and then to work with your policy folks in HR and in the Disability Employment Program in your respective agencies to come up with a solution that really makes sense rather than forbidding someone not to telework because there's not necessarily a category or a policy that talks to that informal medical reason for telework. So with that, Alison, I think we're ready to move on and hit some of your key points on legal and policy considerations.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Alison: Thank you, Mika. Just to reiterate with the ADA, the original ADA was passed in 1990, and we learned that, throughout the year since its passage, there were tons of core cases regarding the definition of disability. And what we've found throughout the years is that the definition of disability became more and more narrow, thus eliminating a lot of folks the congress really intended originally to include in a coverage under the Americans with Disabilities Act. So in 2008, the congress had given EEOC, Equal Employment Opportunity Commission, authority to develop new regulations that would expand the definition of disability.

And this is really an interesting step because, previously, many folks were not considered folks with disabilities and then, in this post ADA Amendments Act time, we are finding more and more people are coming forward and asking for accommodations. And I think it's important for us to think about our workforce, especially in federal service. We have an aging workforce and studies indicate that one in seven people will develop substantial limitations before reaching retirement age. I believe – I'm not quite sure about USDA specifically – but some departments have a medium age of like 55 and, as we get older, we all develop more limitations which may rise to the level of disability under the ADA. So we can anticipate there'll be more and more people qualifying as individuals with disabilities under law and will be requesting reasonable accommodations.

Let's go ahead and move forward. I'm not going to go into a lot of detail about the definition of disability because that's a separate presentation in itself. We do cite some resources at the end of today's program, where you can follow up for more information. And you can always refer to your agency's reasonable accommodation designee.

So we're going to speak to... I think that we addressed the FAQ already. Is that why you're skipping it, Allan? I think we missed a slide there.

Allan: OK, I'll put it back—

Alison: I'm just going to address a frequently asked question. OK, thanks. May permitting an employee to work at home be a reasonable accommodation, even if the employer has no telework program? And we did address this just a little bit earlier, but I just wanted to reemphasize that, if the person's limitation rises to the level of disability, it's defined by the law that it would be reasonable for the employer or manager to modify their no telework policy to ensure that the person with the disability has equal access to the workplace.

Mika: And that might be a little dated anyhow because of the legislation of the TEA, the Teleworking Enhancement Act, of course, agencies are required to have a policy. But think what you're speaking to also is that, if you have a workforce that is largely ineligible or maybe the mission precludes most from participating, that you still need to give a scrutiny and really look at the job functions and duties and think about what kind of portable work could be done off-site.

Alison: That's true. Absolutely. Well let's transition, then, over into just the reasonable accommodation basics. I want to provide just the overview from the 20,000 ft. level, and then



Telework Management: Course #2 - Telework as a Reasonable Accommodation

maybe some minor modifications or deviations from this on your agency policy. However, this is the basic process. First, a person makes a request, either in writing or verbally, to their supervisor or their reasonable accommodation designee. And then it's determined whether or not they have a disability as defined by the law and, for non-obvious disabilities, the person may be asked to provide some medical documentation, which evidences what their limitations are. And then, through a very interactive process with the manager and the employee and the accommodation designee, they talk about what are the essential functions of the job. What are the duties a person does on a regular basis? The reason why the job is there. And how do the limitations relate to that? And then there's discussions around possible solutions. And again, very, very important to include the employee in these discussions because who knows more about their own limitations and their abilities than the employer themselves? So again, talk about possible solutions and, through a further discussion, you can make a decision as to what would be an effective means for meeting the person's accommodation needs. And then, of course, you would implement, procure what's needed, and then you want to do a follow-up evaluation, just touch base with the employee and make sure things are going well and that it seems to be continuing to work well for them. Periodically following up is really a good idea, because some disabilities do change overtime and some workplace requirements change overtime. So remember that reasonable accommodations are not set in stone, but they remain flexible and can change overtime for both the manager and the employee.

So let's go forward and just talk about some of the key contacts. And I have addressed some of these already in the earlier conversation here. As I mentioned, the employee is very to the process and to the information provided to the direct manager or supervisor, the accommodation designee, and of course the telework coordinator. I think Mika is demonstrating how she and I interact a lot, not only on the policy, but also as questions come up from both sides, with people with disabilities that might have questions about telework, and from the general workforce that have questions about accommodations and teleworks. We collaborate a lot. And I strongly encourage folks to do that within their own work. Now, on federal service, we have a great resource out of the Department of Defense and they're funded by congress to support purchasing reasonable accommodation technologies or assisted technologies and supports for people or employees with disabilities throughout federal service, and we refer to this program as CAP, otherwise known as the Computer/Electronic Accommodation Program. So most federal agencies are partners with CAP and, when an accommodation need comes up for assisted technology and support, the reasonable accommodation designee communicates with the CAP program and can make a request. And, most of the time, that is provided free of charge to the partnering agency.

So they are a wonderful resource and, in my next slide in just a minute here, I'll tell you a little more in detail how they can help specifically with telework request. I also want to share the job accommodation network. They are also known as JAN, they're funded by the Department of Labor and they have been around since the early stages or days of the Americans with Disabilities Act. And they have a wealth of resources and information on their website. A lot of factsheets on almost every disability and limitation that's out there.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

So, if you find that you have an employee who has, let's say, chronic fatigue syndrome, you can go to their website, which is listed a little further down in our resource slides, and just do a search for chronic fatigue syndrome or chronic fatigue, and a factsheet will come up to provide some basic information about the condition, some possible limitations and some ideas for accommodating that person. And, in fact, telework is considered a recommended or suggested accommodation for folks with chronic fatigue. So it really provides non-biased information in a very factual, simple form, that you can use to help educate their employees themselves with the disability and the manager. And reasonable accommodation designees use that information often. And the last resource I just wanted to share is the Equal Employment Opportunity Commission, otherwise known as EEOC, because EEOC is tasked with enforcement of the employment provisions of the ADA Amendments Act. So you'll find a lot more guidance on their website regarding reasonable accommodations, the definition of disability under the ADA Amendments Act, as well as they do have a guidance on telework as a reasonable accommodation.

So let's go on to the next slide, where I'll give you a little more information about CAP and how they help with technology purchases. Under a standard telework request that we mentioned earlier, we have an employee with a disability who requests telework, similar to their disabled coworkers. CAP, if you make a request through them, can provide the same assistive technology the employee has already been approved to use at work, for use at home. So, therefore, they have the same access at home that they would at work. It's very simple. The second standard or situation in which they would provide accommodation is if it's for telework. Now what's cool about this that, if you have an employee with a disability who wants to telework or needs to telework as a reasonable accommodation, CAP may even provide the computer or laptop that the person would need to work at home in addition to the assistive technology to enable the employee to telework. So I think that's pretty cool, it saves all of our federal agencies extra money and certainly makes it a lot easier to fulfill these requests as they come in.

And this actually is a frequently asked question, a question that one of our participants asked earlier. How frequently may someone with a disability work at home as a reasonable accommodation? And it really is based on the extent that the person's disability necessitates it in relation to what their work responsibilities are. There really is no set limit or, of course, no minimum but, as Mika and I mentioned earlier on, you really want to focus on the productivity and effectiveness of the accommodation. So, if I'm a manager of several folks and one person's requesting accommodation as an accommodation, I'm going to look at how I can just keep them on staff for a full 48 hours a week and keep the productive.

So I was going to share a few examples with you. Reasonable accommodation as telework examples. And these are actually real life examples we've experienced at USDA and in my previous jobs. So the first example I share is an employee with newly diagnosed fibromyalgia. Fibromyalgia is a chronic condition. It often causes widespread pain and fatigue, as well as a variety of other symptoms, and



Telework Management: Course #2 - Telework as a Reasonable Accommodation

the can vary from day to day. It's chronic in nature, it's unpredictable, though. And so employees with fibromyalgia might benefit from a flexible work schedule, in addition to telework.

So, in this case, you would follow or refollow the reasonable accommodation process, redocumenting the person has fibromyalgia, received a doctor's note which indicated what the person's limitations were, and then related that to the person's essential job functions. Now, the employee reported that, by 2 o'clock every day, they were just exhausted and unable to complete their work task in the afternoon. And, upon further discussion, we learned the person had to do a lot of walking to just get to their normal, every day commute, and that they would benefit, based on the doctor's recommendation, from maybe being able to rest at lunchtime for even just 15 minutes. And, of course, some folks with fibromyalgia benefit from regular physical therapy. And, if they have appointments close to the home, it's been indicated earlier in today's discussion, that it seems to save a lot more work time if they're able to telework and save that commuting time and save their energy for actually focusing on work. So this individual was initially approved for telework for approximately 2-3 days a week and, as the person proved that they were dependable and very productive – in fact, their productivity increased – the manager became much more open and flexible to adding additional days, as needed.

And, of course, within that, the manager was able to institute some measures in which they were able to help monitor and support the person with their workload just through a weekly meeting at the beginning of the week, just kind of looking over what needed to be done for the week and, by the end of the week, the employee was reporting out on their accomplishments. The second example I share is a student intern with severe diabetes. This manager employed a student whose hometown was like four states away and about six hours drive away. But the intern was attending a school near the work location. Unfortunately, the student had rather severe diabetes that required weekly monitoring by a group of specialists. It was type 1 diabetes and just very, very up and down all the time. And so the employee, the student intern, asked for permission to telework on Fridays and Mondays, so that they could commute to their home state, about four hours away, to attend regular medical appointments that were weekly in nature. The employee, or the student, provided medical documentation, it was clear that the student's work duties could be performed remotely through telework, and again, the manager instituted some reporting and evaluation requirements, just to keep in touch and make sure things were being done that needed to be done, and the student intern was so appreciative.

He continued to stay in touch with USDA and, upon graduating with honors, went on to work and became fully employed with USDA. So I think that was a great example of an investment, even with a student intern, when a lot of folks would think, "Who would want to allow an intern to telework?" Perhaps a pregnant employee in the third trimester or even earlier. If the person develops some things such as preeclampsia, which usually includes a lot of swelling, which requires putting the person's feet up and resting. Sometimes there are blood pressure issues, and it can be very serious to both the mother and the unborn baby.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

So this would be a situation where it's not significantly temporary in nature, it might be a condition that lasts more than three months. Remember, the pregnancy in itself is not a disability, but the acquired limitations a person had as a result of preeclampsia made it very limiting for them to perform certain duties and commuting, of course, would almost endanger the person and their unborn baby. So, in that case, the person was able to ask and receive telework as a reasonable accommodation. And again, they were able to maintain their productivity, whereas otherwise they would have had to take leave and the manager would have been really trying to fill the responsibilities without the person there.

Mika: Alison, I really like your example with the pregnant employee with preeclampsia because I had that with my first child. I was in the army at the time and it was 11 years ago, but that's telling my age, of course, but I was on house rest for a little over a month. So I was the executive officer of a very fast-paced high organization in the Intelligence Community and I couldn't work. But, if telework had been approved at that time, long ago, and I was able to, I mean I was more than able to work, I just had to rest to take it easy, so it's a great example that you shared.

Alison: Well, great, I'm glad that relates well to you and I'm sure many other people in the audience.

Well, with this, let's move forward to our next slide, where I'm just going to share with you the links to some of the resources I already shared earlier in the presentation. EEOC's guidance is really, really straightforward and has a lot of the frequently asked questions I referred to in today's program, so I strongly encourage you to refer to that. It's a great resource for your managers as well. Job Accommodation Network, it's simple, just askjan.org, and they also have a toll-free 800 number that you'll find on the website. Any questions you ask them are kept confidential, and they're very good at responding to all requests. And then, of course, we have the CAP, the Computer/Electronic Accommodations Program so, if you are in federal service, I strongly encourage you, if you haven't already visited their website, to check this out. I actually provided the direct link to the telework information. However, there are a wealth of other resources throughout the site, including some recently uploaded videos on certain disabilities and accommodations solutions.

Now back to you, Mika.

Mika: Thanks so much. I wanted to list here some resources for telework, of course, a key across government for your access. If you don't know about telework.gov already, that's a GSA and OPM cosponsored website resource. It has great information regarding training, there are links to all of the federal agency telework coordinators that you're looking to benchmark information, there's a framework and information there that you can find, so I highly encourage you to get familiar with telework.gov. And, of course, the Mobile Work Exchange, which is a public-private partnership and sponsors the annual telework week from March 3rd to the 7th. So, if you're in an organization that is somewhat slow-moving in telework adoption or implementation, I encourage you to take a look at telework week and see how you might deal with the leverage, even just a few days out of that week, to try it out, test out telework from maybe a perspective, and also thinking through how it can



Telework Management: Course #2 - Telework as a Reasonable Accommodation

straighten your initiatives around the disability employment program, as you get familiar with the reasonable accommodation process, as well as how you can accommodate everyday issues with telework, which is really free to implement. So, with that, Allan, I'd like to hand it over to you, if you have more to say and if you have some questions from the audience. I believe Alison and I would both be happy to answer some.

Allan: well yes. Thank you both very much. We do have a lot of questions, so I'll jump right in. somebody in audience asks, "What about a spouse who's having knee surgery and is required to be off from work for 4-6 weeks? Could the federal employee request telework for a few weeks to accommodate the spouse by helping them get to physical therapy?" So they want to take their spouse to physical therapy.

Alison: Wow, I think I'd like to respond to that one, if you don't mind. Is that OK, Mika?

Mika: Oh, OK. It's alright.

Alison: just from the perspective that, under the newer definition of disability, recognizing what's involved in knee replacement surgery, that would probably rise to the level of disability and the person may be eligible for reasonable accommodation. So I just wanted to jump in initially with that, I don't know, Mika, if you have more information to share from the telework perspective, but I think it would be—

Mika: Now, Allan, was the employee asking as an employee or the spouse of an employee?

Allan: I believe they are an employee and it's their spouse whom they're taking care of.

Alison: Well, OK. I guess I'll just present the reasonable accommodation perspective, then Mika might speak more to telework in general, but reasonable accommodations are not for people without disabilities, such as the spouse. You're not eligible for accommodations. But Mika might speak more specifically to how that might fall into the general telework policy.

Mika: Well, absolutely. I mean, in our policy at USDA, there's actually a stipulation that we have within our department of regulation that talks to instances of even up to full time telework for short term issues of six months or less. Now that, of course, is that management discretion employee to follow their agency's policy. However, it gives flexibility for managers to authorize telework in those instances. And, quite frankly, at this point, we're really empowering our managers to try to be as flexible as possible within the confines of mission accomplishments. So, again, in my mind, what the threshold would be is, if you would have had to authorize sick leave to take care of a family member or FMLA for long term issues that would be authorized as part of that benefit or entitlement, then it makes sense to think about how you could creatively use and leverage telework as a means of still getting the job done, but accommodating those kinds of situations.

And so, we talk about, at USDA, combining the use of, again, flexible work schedules, use of leave and accommodation of telework. And so, thinking creatively about how you can still accomplish the



Telework Management: Course #2 - Telework as a Reasonable Accommodation

job – because for the organization, for the government, it’s about delivering services to the American public – but also it’s about taking care of the people who do the job. And so, thinking through how you can do that efficiently is really important. If it were me as a manager, I would think through the solution part and less about the reason why. So how is that employee going to stay connected? We’ve had examples of folks that have been authorized to telework a little bit, a portion of a duty day, in combination with sick leave, when a family member was in the hospital, provided the hospital had Wi-Fi access and that person could be accessible and available for their customers, their coworkers, and their supervisors.

So I think, again, that the creative use of thinking outside of the box, thinking how you can apply policies, but also, ultimately, the bottom line is to have that employee be productive while still having to take care of things that might be important to them or necessary for them outside of the workplace.

Allan: OK, thanks, Mika, and thanks, Alison. I just wanted to let you know we have about 20 more questions at least, so... Charlene asks, “Does a new telework agreement need to be in place each time the employer requests to telework for a reasonable accommodation?”

Alison: Well, I would think not because, if you have a disability, chances are that’s more of a long term limitation, and then you shouldn’t have to renew it ever. It’s one thing to revisit a policy and make modifications, but I would hope you would not need to go through the whole process of reasonable accommodation each time it’s requested. That would be, I think, unreasonable and certainly not an effective use of time.

Mika: For a short term medical condition and there were different instances around that. So let’s say somebody had a sprained ankle and needed to be off their feet for two weeks and then, six months later, they might have some surgery of some sort. Really, it’s about that communication process between the manager and the supervisor. At USDA, our policy states that, if there’s going to be something permanent that changes for more than six months, then you do need to put in a new agreement so it would be for each instance that would require a change, provided it’s over six months.

Allan: OK.

Alison: Alright. But, just to be clear, in terms of reasonable accommodation, if someone actually meets the definition of disability, they would not need to continuously renew a telework agreement. That would be highly unusual because chance are, to meet the definition of disability, that limitation would be minimally three months. Now that’s not a hard and fast rule, but it’s a general idea that, to meet the definition of disability, the limitation would need to occur chronically or even episodically, possibly. So I’m kind of leaning toward the “it would not need to be redone every time a person has need”. It would probably be best to, I guess, institute initially a trial period of 30-60 days, and then revisit it, but you wouldn’t want to go to the accommodation process more than once without just minor tweaking.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Allan: OK. We have maybe a follow up from Jennifer to that medical privacy question that you used in the poll. She said her HR requires a medical professional must attest to the need for reasonable accommodation and telework, but they can do that without divulging the confidential medical information. Does that make sense to you?

Alison: Not really. Generally, those decisions are made in tandem with a reasonable accommodation designee, and that designee may be the person that manages the medical documentation, and they would need a little more information about the limitations to help make the decision. But there are some variances from agency to agency, so chances are that particular agency manages that process a little bit more differently.

Allan: OK. And, if the questioner wants to clarify that even further, because there are a few more suggesting that you need this medical information, maybe the application of this is not consistent across government agencies. I can't tell what agencies people are saying this, but it sounds like people are being asked for more proof.

Alison: Well, it's OK to obtain medical documentation, that's considered reasonable, especially for non-obvious medical conditions, because you want to make sure the person is meeting the definition of disability. So that is reasonable. You can't ask for medical documentation.

Allan: OK.

Alison: But, generally, you have to state what the limitation is, that you can't just allow the medical practitioner to decide whether or not the person is eligible for telework. I think that, generally, there is a point of contact in the agency that helps the manager make the decision as to whether or not the limitations the person is experiencing correlate to their need for telework. That connection is not usually made by the doctors themselves.

Allan: OK, that seems—

Alison: There can be some variance, but...

Allan: Do either of you have any experience with law enforcement offices? Darlene is asking, "What type of telework agreements law enforcement officers are allowed to or might typically request?"

Mika: I don't have any experience with law enforcement officers, but again, I come from the Intelligence Community, where, of course, access to certain information and networks was [51:04], so a lot of the work could not be done on an off-site basis. But, when you think about the functions of a position and whether or not you can determine eligibility that way, it's really wise to often think about what kind of things, administrative-wise, can be done off-site. So, for instance, is there mandatory in your training that has to be done – in our department, we have TII training, we have information and technology security training, we have annual ethics training, we also have performance reviews and information that has to be updated on our individual development plans, those sorts of things – when you think about the percentage of duties that could be off-site, even if –



Telework Management: Course #2 - Telework as a Reasonable Accommodation

in the threshold at the USDA we used initially, we launched our new-at-the-time 2011 policy – was that, if they could work off-site for a portion of a duty day, even just one time a year, that technically they're eligible.

Now that's really a challenge when you're faced with cultural issues, but again, when you think through the kind of job functions that could be done in a remote environment, or even in a alternate worksite, think about those kind of duties and have those in your kit bag as a manager so that you could start implementing telework even on a pilot project basis, on a small job basis, so that, if there ever were a time where your folks had to work off-site because the facility was closed or weather or, God forbid, there was something to do with building that wouldn't allow you to work from there, you would have your folks able to at least participate in some form of official duty time off-site.

Allan: OK, great.

Alison: I think you might want to refer it to other resources, such as Job Accommodation Network and the ADA Information Centers that are located regionally across the United States, and I could just give you their toll-free 800 member, and that's 18009494ADA. And calling that number will automatically route you to your regional center, and they have done some work with law enforcement in different areas of the ADA. So I would consider calling them as well as another resource, specific to law enforcement.

Allan: could you read that 800 number one more time, Alison?

Alison: Sure. It's 18009494ADA. And then 4232.

Allan: OK.

Alison: That's the number.

Allan: OK, great. I'm just going to share that with the audience, but don't forget, you'll see this in the course notes when you visit TMGovU, so we'll have that there too. Alright. Jane is asking for some clarification. It seems that one cannot telework if there are small children at home without daycare and yet we have been talking about a reasonable accommodation for people who have newborns. Is there a conflict there?

Alison: I actually cannot speak for reasonable accommodation for a newborn, I spoke to new reasonable accommodations for a person who is pregnant that has complications that might rise to the level of disability. So we can accommodate the individual with the disability. However, we are not asking for an accommodation when the baby is born, to take care of the baby. And then Mika probably has further guidance from the telework perspective. You can't use telework under certain conditions. So I'll turn it over to you, Mika.

Mika: So, in that instance, let's say if the employee was the mother and there were complications. And, even after the birth of the baby, they had a recuperation timeout. That would qualify them for



Telework Management: Course #2 - Telework as a Reasonable Accommodation

either a short term or long term disability, and accommodation using telework was authorized. Well again, presumably, that infant would be at home, right?

As long as there's an alternate caregiver to provide help for that infant so that the employee could then work on official duty time, that's completely permitted. In addition, again, as I mentioned before, maybe thinking about how to structure a work day so that that mother could take accommodation or sick leave and telework as a reasonable accommodation in that instant, as provided that, again, while she's on official duty time, she's being able to perform the duties of that job, either through daycare or an alternate caregiver or a spouse at home to take care of that child. Now, from a telework policy perspective regarding dependence in the work environment when you're teleworking, our guidance at USDA is that, if you have dependence in the home that requires supervision, you cannot be teleworking while you are supervising those dependences or needing to care for those dependences.

But, if there's an alternate caregiver in the home and you're able to perform to functions on your job while on official duty time, that's permissible. That could be a nanny, that could be a mother's helper, a babysitter, a spouse, whatever. As long as you're being held accountable for the official duty time while you're doing that, even in an elder care situation – there are instances where I've spoken to a lot of folks now in the federal workplace that are in the sandwich generation, so they're taking care of their own children and then elderly family members. Well, if there's an alternate caregiver that's available while they're working and on the clock, it's really not an issue. What you want to make sure, and especially from a manager's perspective, is that you're holding folks accountable for being, again, accessible, available, and accountable for the work they've done

Allan: Right. Great. Well, I just wanted to do a quick time check with both of you to see if you're able to stay a few minutes long. We do have much more questions to get through, maybe 10. If not, we can maybe get the answers to the questions offline and share them.

Mika: I have about a few more minutes simply because I have another webinar I have to jump on. I'm actually just participating in, but it's equally as important. So I can take a couple more questions, but then I do have to jump off. I did want to ask, Allan, that you just remind folks of how they can register for the rest of the courses. I know there were a lot of questions last time around how they can register because what people were doing was going back to the link that they used to register for this particular session, and it was no longer active. So, if you could talk to them after we're done with the questions, that would be great.

Allan: Yeah, sure. Just quickly, if you've registered for this course, you do not have to register for any of the others in the series, you'll automatically register. But I will talk about it in case others want to register, that you want to refer to this. A statement was made, this is Jane, that agencies are required to have a telework policy in place. Is that true in state government? I mean you may not know this, I know you're not in state government, but do you know, is that true in state governments?



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Mika: I don't think it applies to state government, I think it only applies to the federal government. In fact, I'm pretty sure of that. But what's across the federal space, many local and state governments are really following to with what the federal government is doing to implement telework. And again, those resources that I listed are really open and available for all of you to look at. And many of us are willing and able to help provide you with information if you're looking to benchmark programs that have been successful on the federal sector.

Alison: I also wanted to add that, actually, in federal service, there is an executive order, a presidential order instituted in the late 90s, which required all federal agencies to have a reasonable accommodation policy procedure in place, and then that was filed with EEOC once they were completed. However, across state service, I'm not quite sure what the requirement is. However, to learn more about the resources and the policies in your own state, I would encourage you to contact your governor's office on employment of people with disabilities. I believe most governors have a point of contact and probably a committee, all the way down to the local level, that is supposed to help address the needs of people with disabilities in the community. They should have more information as well. And you can also go back to the toll-free number I provided to you and they can provide with more information at the ADA information centers. There are 10 of those across the country.

Allan: OK. I'll just take my Q from you, Alison, and Mika, you can tell me, last question or whatever you like. It could be this one or the next one or whatever you wish, but Jennifer asks, "Can a denial of reasonable accommodation be used to help an employee pursue disability retirement via the social security administration?"

Alison: I don't know about the linkage with social security disability, but I do know that, before a person in federal service can be considered for disability retirement, people in positions such as my own have to sign off to evidence that all reasonable accommodations have been exhausted, including reassignment. So, if you're in federal service, you may not be eligible for SSDI. If you're in private industry, I'm not quite sure if that would be... I guess it would be beneficial to the application, but just know that SSDI applications are first ones usually down. Almost always, you have to go back and try again. It's just a tough nut to crack. There are also resources to help you out with that process and the ADA Information Center is connected with your regional and local context, and they would also be a good resource to you in private industries.

Allan: It's a great point, too, I guess, if we don't accommodate people, we might be pushing them into a disability-type leave or retirement.

Alison: It's a fine line, yeah. In some cases, a person is truly ready for disability retirement because they just have reached a point with the disability. They themselves feel like they can no longer work. But they still have to go through the process of reasonable accommodation, and it has to be signed also, so that we're preventing people from being pushed out when they're not really ready.



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Allan: Right. OK. Stacy asks, “How do we determine an employee’s ability to perform the essential functions of a job post-surgery, especially when they’re on pain medication?”

Alison: Oh, that’s a toughie. Well, I think that goes to the interactive process and also medical documentation. In a situation following surgery, it would be reasonable to request... for a lack of medical term, “I’m ready to work” statement from the doctor, evidencing that the person’s ready to go back to work in some capacity. Sometimes, that’s done in a transitionally stage [01:02:31] certain number of hours initially, and then we graduate back into working full time. Did you have more to add on that?

Mika: Yeah. I was going to mention that, Alison. We talked about, rather than using FMLA or sick leave, but really it’s only in those instances that you’re well enough to work. So, if you’re down for the count with a flu that’s so bad that you can’t get out of bed, [01:02:56] can authorize telework, nor should you ask for that. You really need to be put to sick leave. You have to be working and you have to be judicious with the efficient duty time.

Alison: And really, there are things that a manager could do to help monitor whether or not a person is being productive without being harassing. I think there is kind of a fine line there as well. You want to strike a good balance between allowing a person to telework, but also holding him accountable, as you would with any other employee who’s physically in the office space.

Mika: Absolutely, what you said earlier in the presentation about inviting your employee to be a part of that solution. It’s a really smart strategy, especially for jobs that might not typically be suitable for long term telework. When you have a certain situation like this, it’s a really wise to have a conversation, as a manager, between managers and employees, and ask them, “How would you envision being able to get your job done through telework for the next three months? How are we going to keep you engaged, connected with your team, available for customers?” And let the employee give you some ideas. Normally, they have some great ideas, which should ultimately, the majority of federal workers want to do a really good job and they want to do it well and they want to please their supervisors, so invite them to be a part of that solution, rather than just assuming what you think they can or cannot accomplish.

Alison: Excellent. I agree.

Allan: There seems to be still a long... OK, maybe this is a good one, then, because there’s still a lot of confusion about using reasonable accommodation/telework, and I’m paraphrasing about 20 questions here, so... To look after a spouse, to look after a child – and I think you said that’s not an appropriate use of it, but maybe we could just cover that again for our last question.

Alison: If I could just come back to the original basics of reasonable accommodation, accommodations are for the individuals with a disability. If you’re talking about teleworking, Mika can speak more to the other general guidance under telework, but if you are the individual with a disability, you’re—



Telework Management: Course #2 - Telework as a Reasonable Accommodation

Mika: You have to be the federal employee. The individual, you mean as the employee.

Alison: The employee, yes.

Mika: Correct.

Alison: You're the employee with the disability, you may be eligible for telework as a reasonable accommodation if your limitations rise to the level of disability. If you are a federal employee and you're trying to take care of a spouse who has a disability, you are not legally eligible for reasonable accommodations. You would need to go to the more general telework policy and further explore your options there. And then Mika provided some good guidance in terms of using multiple resources, such as FMLA, Family Medical Leave Act, your regular leave, your sick or annual leave.

Mika, did you want to expand further on that?

Mika: Yes. Again, when you're talking about caregiver issues – and we all understand that, there are really important issues – but, from a manager's perspective, if you have an employee that would otherwise qualify for FMLA extended sick leave or use of leave to take care for a family member, think through how you might creatively authorize either a portion of a work day with telework while there's an alternate caregiver or while they're not required to be supervising those dependents, and then hold them accountable. And, if you guys have examples, I have many of them from across USDA, from managers in all of our agencies who have a really come up with some creative ways for allowing for, say, as an example, recovering from breast cancer of a family member or dealing with a father [01:07:23] or a very young federal employee who did not have the right to leave because, let's face it, when they join the federal workforce, they're not earning leave at the same rate. And so I have a lot of great testimonials and really good examples. And, if you're interested, Allan, you can show them my email address, which is telework@dm.usda.gov. So I'd be more than happy to share that with you. And I know a lot of other coordinators across the federal government have examples of these kinds of scenarios as well. So, Allan, I have to jump off, I'll just stand by for one more minute, while you close up, Allan.

Allan: OK, well thank you very much, Mika. I think I shared that correct email but, if that's incorrect, we'll get it right on the course page. Thank you, Mika. Thank you all so very much. Again, you're all registered for the entire series. You will receive reminders. If you want to refer anybody else, we'd appreciate that, but they would have to go to tmgovu.org and click on the banner that advertises or promotes this certificate series, which will take them directly to the correct registration. But wait until tomorrow because we're just changing that today. So thank you very much. Thanks, everybody who attended, and we'll see you hopefully on February 6th, noon to 1 PM, for the next course in this series, about supervisor best practices. Bye for now.